

## Second Supplement to Memorandum 2000-12

### Early Disclosure of Valuation Data and Resolution of Issues in Eminent Domain

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We have received the letter attached as Exhibit pp. 1-2 from Norm Matteoni addressing issues raised in Memorandum 2000-12 and its First Supplement.

#### EARLY DISCLOSURE OF VALUATION DATA

Mr. Matteoni offers some additional observations about the ineffectiveness of exchange of valuation data procedures in achieving settlements. He does not think advancing the time of the exchange will help matters — the more complicated the case, the more time necessary for investigation and evaluation. “If the time for exchange of valuation data is advanced, these type of cases will not be able to do a meaningful exchange.” Exhibit p. 1.

He reinforces these observations in his letter attached to the Second Supplement to Memorandum 2000-11. In that letter he urges caution in evaluating the suggestion that the time for exchanging valuation data be increased from 60 to 120 days before trial. He notes the heavy burden on a property owner in a complicated valuation case to engage foundational experts such as planners and civil engineers to provide background investigations and studies for the appraisal process. With Fast Track judicial processing of cases to trial, the property owner can be caught in an unrealistic time crunch if the exchange of valuation data is advanced too far before the trial.

#### EARLY RESOLUTION OF LEGAL ISSUES

Mr. Matteoni likes the concept of early resolution of legal issues. However, he thinks the same judge who handles the legal issues should also handle the valuation trial. This ordinarily would be more a matter of efficient judicial administration than eminent domain procedure. Mr. Matteoni does not elaborate reasons for his concern.

## DISCLOSURE OF DETAILS OF PRECONDEMNATION APPRAISAL

The law directs public entities to make every reasonable effort to acquire real property for public projects by negotiation; it requires them to appraise the property and provide the owner a written statement of, “and summary of the basis for,” the amount it offers as just compensation. Gov’t Code §§ 7267.1–7267.2. Mr. Matteoni reiterates his experience that the summary statement is too brief — most agencies do not provide a list or a representative number of comparable sales. If the condemning agency were required to set forth some of the basic data on which its appraisal is based, that would engage the parties in early discussion, with a greater chance for a negotiated settlement.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

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Re: Eminent Domain Study; Memorandum 2000-12

Dear Nat:

I reviewed the above mentioned Memorandum dated January 12, 2000 concerning early disclosure of valuation data. I agree that the Los Angeles system should not be adopted as statute and offer the these observations.

First, the vast majority of condemnation cases settle before the formal exchange of valuation data under the current rules.

Second, the more complicated the case the more time necessary for investigation and evaluation. If the time for exchange of valuation data is advanced, these type of cases will not be able to do a meaningful exchange. For example, part takes can involve analysis of impairment of access, loss of development potential or increased cost of development. The appraiser cannot in these type of situations simply provide of valuation data without input from other experts such as civil engineers and planners. Now with the admissibility of general benefits to offset damages, there is the prospect of interjecting economist into condemnation trials. This means additional investigation of sales in relation to earlier phases of the projects or other similar projects are required.

The simpler cases that only involve appraisers in most situations will settle without the need of earlier disclosure. The natural process is for the property owner after receiving an offer to make an investigation and come back to the agency during negotiations with additional data that the agency may not have

Nathanial Sterling

January 31, 2000

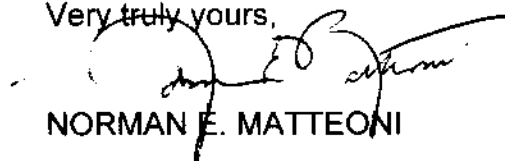
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considered. If there is additional market data, the agencies do consider that and frequently offer more.

I do like the idea of focusing on early resolution of legal issues. But, I would not like legal issues resolved by one judge and the case tried by another judge.

Rather than advancing the exchange date, it is worth looking at the precondemnation offer accompanied by a summary statement of value. That summary statement in my experience is far too brief. While some agencies will provide a list or a representative number of comparable sales, most do not. Therefore, the statement of valuation is just conclusionary. If the condemning agency were required to set forth some of the basic data on which its appraisal is based, it would invite the property owner to engage in discussion on those points. The agency then could ask for any data the property owner has to show a different conclusion. This would engage the parties in early discussion.

Very truly yours,



NORMAN E. MATTEONI

NEM:sd